

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
eBC, INC.,

Plaintiff,

-against-

MAP TECHNOLOGIES, LLC; WAYNE K. AUGÉ; ROY
E. MORGAN; and NUORTHO SURGICAL, INC.,

Defendants
-----X

Case No.:

Assigned Judge:

DEFENDANT NUORTHO'S
NOTICE OF REMOVAL TO
FEDERAL COURT

TO THE CLERK OF THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN
DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE THAT Defendant NuOrtho Surgical, Inc. in the above-captioned
matter hereby removes to this Court the state court action described below.

Defendant NuOrtho Surgical, Inc. (hereinafter "Defendant" or "NuOrtho"), hereby gives notice
that this action is removed to the United States District Court for the Southern District of New York at
White Plains from the Supreme Court of the State of New York, County of Dutchess. Pursuant to 28
U.S.C. § 1441, *et seq.*, Defendant further states as follows:

State Court Action: Defendant NuOrtho is named as a defendant in a civil action filed in the
Supreme Court of the State of New York, County of Dutchess, bearing Index No. 2009-7817, and
entitled: eBC, Inc. v. MAP Technologies, LLC; Wayne K. Augé; Roy E. Morgan; and NuOrtho
Surgical, Inc. (hereinafter "state court action").

Commencement of State Court Action: The state court action was commenced against
Defendant NuOrtho when plaintiff's Summons and Complaint was served on Defendant on or about
November 21, 2009. This Notice of Removal is therefore timely, in that it is being filed within thirty

(30) days of receipt of service of the Summons and Complaint by Defendant. Defendant NuOrtho has not filed pleadings in this case in the state court action.

Record in State Court: The plaintiff's Summons and Complaint, and the Answer by Defendants MAP Technologies, LLC, Wayne K. Auge and Roy E. Morgan, upon information and belief encompass all of the pleadings received or filed in this action up to the present time. A copy of the Summons and Complaint, and the Answer of the other defendants are attached hereto as Exhibits "A" and "B."

Diversity of Citizenship is Basis for Federal Court Jurisdiction: This dispute between plaintiff and defendant is a controversy between citizens of different states.

- a. Plaintiff eBC, Inc. is a New York domestic corporation, with an office for business in County of Dutchess, State of New York.
- b. Defendant NuOrtho Surgical, Inc. is a Delaware corporation with its principal place of business located in the State of Massachusetts.
- c. Defendant MAP Technologies, LLC is a New Mexico corporation.
- d. Defendant Wayne K. Auge is an individual, and resident of the State of New Mexico.
- e. Defendant Roy E. Morgan is an individual, and resident of the State of California.

Nature and Description of Case: This action seeks damages and attorneys' fees and costs, among other relief, against defendants for alleged breach of contract, and for quantum meruit, in connection with plaintiff's alleged rendering of services to defendants.

Amount in Controversy: Plaintiff seeks to recover an amount in excess of \$75,000. The Complaint states that plaintiff seeks, *inter alia*, judgment against defendants for an amount allegedly due and owing to plaintiff in the amount of \$130,883.14, together with interest at the statutory rate of

9% from January 5, 2009. *See* Plaintiff's Complaint. Plaintiff also seeks legal fees in this case and "such other and further relief as the Court deems proper." *Id.* Taking all these factors into consideration, defendant reasonably believes that the plaintiff seeks damages and/or other recoveries counting toward the jurisdictional minimum, in excess of \$75,000.

Applicable Statutes: This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the action is removable to this Court pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446, *et seq.*

Concurrent Notice to State Court: Defendant is concurrently filing a copy of this Notice of Removal with the Clerk of the Court for the Supreme Court of the State of New York, County of Dutchess, Index No. 2009-7817, pursuant to 28 U.S.C. § 1446(d).

Dated: Walden, New York
December 17, 2009

JACOBOWITZ AND GUBITS, LLP

BY: 

Michael L. Fox, Esq. (MF 9054)

Robert E. DiNardo, Esq. (4472)

*Attorneys for Defendant NuOrtho
Surgical, Inc.*

158 Orange Avenue, P.O. Box 367

Walden, New York 12586-0367

Telephone: 845-778-2121

Facsimile: 845-778-5173

SUPREME COURT : STATE OF NEW YORK
COUNTY OF DUTCHESS

ABC, INC.,

Plaintiff,

-against-

MAP TECHNOLOGIES, LLC, WAYNE K. AUGER,
ROY E. MORGAN and NUORTHO SURGICAL, INC.,

Defendants.

Filed on:

SUMMONS

Index No.: 2009-

2009

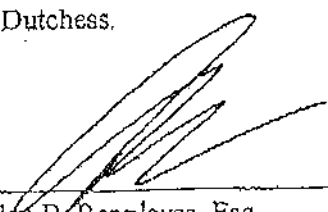
7817

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the County of Dutchess.

Dated this 23rd day of September, 2009.


Allan B. Rappleyea, Esq.
CORBALLY, GARTLAND AND RAPPLEYEA, LLP.
Attorneys for Plaintiff
35 Market Street
Poughkeepsie, New York 12601
(845) 454-1110

2009 SEP 29 PM 3:01
DUTCHESS COUNTY
CLERK'S OFFICE
FILED

TO: MAP TECHNOLOGIES, LLC
936 Vista Jemez Court
Santa Fe, New Mexico 87505

WAYNE K. AUGER
936 Vista Jemez Court
Santa Fe, New Mexico 87505

ROY E. MORGAN
936 Vista Jemez Court
Santa Fe, New Mexico 87505

NUORTHO SURGICAL INC.
151 Martine Street
Fall River, Massachusetts 02723

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

eBC INC.,

Plaintiff,

COMPLAINT

-against-

Index No. 2009-

MAP TECHNOLOGIES, LLC, WAYNE K. AUGÉ,
ROY E. MORGAN and NUORTHO SURGICAL, INC.,

Defendants.

Plaintiff, eBC INC., through its attorneys, Corbally, Gartland and Rappleyea, LLP,
for its complaint against the defendants, states and alleges:

The Parties and Jurisdiction

1. Plaintiff is and was at all times hereinafter alleged a domestic corporation with an office for business in the County of Dutchess, State of New York.
2. Upon information and belief, defendant Map Technologies, LLC is a foreign limited liability company, organized and existing under the laws of the State of New Mexico.
3. Upon information and belief, defendant Wayne K. Augé is a resident of the State of New Mexico.
4. Upon information and belief, defendant Roy E. Morgan is a resident of the State of California.
5. Upon information and belief, the sole members of defendant Map Technologies, LLC are defendants Wayne K. Augé ("Augé") and Roy E. Morgan ("Morgan").

6. Upon information and belief, defendant Nuortho Surgical, Inc. is a corporation organized and existing under the laws of the State of Delaware, has been registered to do business in the State of Massachusetts, and has an office for business at 151 Martine Street, Fall River, Massachusetts 02723. Upon information and belief, defendants Auge and Morgan are officers and shareholders of Nuortho Surgical, Inc.

7. On or about February 26, 2007, the plaintiff and defendants Map Technologies, LLC, Auge and Morgan made and entered into a written agreement, concerning the plaintiff's provision of advisory services (the "Agreement"). Among other terms, the Agreement provided that the defendants submitted to the jurisdiction of the Courts of the State of New York.

8. On or about September 3, 2008, during the term of the Agreement, defendants Auge and Morgan organized defendant Nuortho Surgical, Inc., with plaintiff's advice and assistance, to carry out some of purposes of the Agreement.

The Facts Giving Rise to the Claims

9. Pursuant to the Agreement, plaintiff was to provide certain services and, in return, defendants were to pay plaintiff certain fees.

10. From the date the Agreement was executed until its termination, plaintiff fully performed all aspects of the Agreement which were required of it.

11. On or about October 21, 2008, the Agreement was mutually terminated. At the time of termination, defendants had not paid plaintiff the sums that were required under the Agreement.

12. After the Agreement was terminated, plaintiff made efforts to collect what was owed under the Agreement by defendants. Defendants rejected plaintiff's efforts and, to this day, are substantially indebted to plaintiff.

13. Until after termination of the Agreement and plaintiff's effort to collect what was owed by defendants, defendants did not claim that plaintiff failed or did not perform any of its obligations under the Agreement.

The Claims

First Cause of Action

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "13" above with the same effect as if set forth in full herein.

15. At the time of the Agreement's termination, defendants were indebted to plaintiff in the sum of \$130,883.14, for advisory fees and reasonable expenses.

16. Defendants have breached the Agreement in failing to pay plaintiff what it owed it despite due demand therefor.

17. As a result of the preceding, plaintiff has been damaged in the sum of \$130,883.14, together with interest at the statutory rate of 9%, from January 5, 2009.

Second Cause of Action

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "17" above with the same effect as if set forth in full herein.

19. Plaintiff performed substantial services for defendants in good faith with the expectation of reasonable payment.

20. Defendants accepted and benefitted from plaintiff's services.

21. The reasonable value of plaintiff's services to defendants is \$130,883.14, for which defendants have been billed but have refused to pay.

22. As a result of the preceding, plaintiff has been damaged in the sum of \$130,883.14, together with interest at the statutory rate of 9%, from January 5, 2009.

Third Cause of Action

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "22" above with the same effect as if set forth in full herein

24. Defendant Nuortho Surgical, Inc. was formed with the plaintiff's assistance, and has been the beneficiary of plaintiff's expertise and guidance.

25. Plaintiff performed substantial services for defendants, including Nuortho Surgical, Inc., in good faith with the expectation of reasonable payment.

26. Defendants, including Nuortho Surgical, Inc., accepted and benefitted from plaintiff's services.

27. The reasonable value of plaintiff's services to defendants is \$130,883.14, for which defendants refuse to pay.

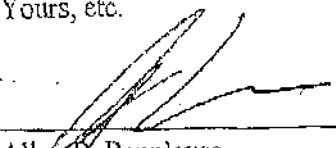
28. As a result of the preceding, plaintiff has been damaged in the sum of \$130,883.14, together with interest at the statutory rate of 9%, from January 5, 2009.

WHEREFORE, plaintiff demands judgment against defendants as follows:

1. On the first cause of action, a judgment in the sum of \$130,883.14, together with interest at the statutory rate of 9%, from January 5, 2009;
2. On the second cause of action, a judgment in the sum of \$130,883.14, together with interest at the statutory rate of 9%, from January 5, 2009;
3. On the third cause of action, a judgment in the sum of \$130,883.14, together with interest at the statutory rate of 9%, from January 5, 2009; and
4. Plaintiff's costs, disbursements and to the extent permissible by law, the attorneys fees incurred by plaintiff in connection with this action, together with such other and further relief as the Court deems proper.

Dated: September 23, 2009
Poughkeepsie, New York

Yours, etc.

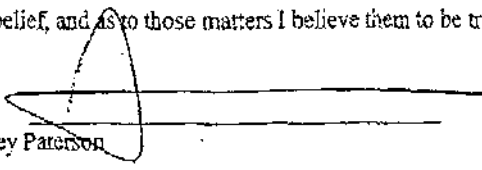


Allan B. Rappleyea
Corbally, Gartland and Rappleyea, LLP
Attorneys for Plaintiff
35 Market Street
Poughkeepsie, New York 12601
(845) 454-1110

STATE OF NEW YORK
COUNTY OF DUTCHESS SS.

Rodney Paterson, being sworn says:

I am the President of the Plaintiff in the action herein; I have read the annexed verified complaint and know the contents thereof and the allegations therein are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.


Rodney Paterson

Sworn to before me this
9th day of September, 2009


Notary Public

ALLAN B. RAPPLEYEA
Notary Public, State of New York
Reg. No. 5008140
Qualified in Dutchess County
Commission Expires Feb. 16, 20 11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
eBC, INC.,

Plaintiff,

VERIFIED ANSWER

Index No. 2009-7817

-against-

MAP TECHNOLOGIES, LLC; WAYNE K. AUGÉ; ROY
E. MORGAN; and NUORTHO SURGICAL, INC.,

Defendants.
-----X

The defendants, MAP TECHNOLOGIES, LLC, WAYNE K. AUGÉ and ROY E. MORGAN (hereinafter "defendants"), by their attorneys, Jacobowitz and Gubits, LLP, answering the Complaint, respectfully allege:

The Parties and Jurisdiction

1. Deny knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "1" and "6" of plaintiff's Complaint, except admit that plaintiff is a corporation.
2. Admit the allegations set forth in paragraphs "2", "3", "4" and "5" of plaintiff's Complaint.
3. Deny each and every allegation set forth in paragraph "8" of plaintiff's Complaint.
4. Admit the allegations set forth in paragraph "7" of plaintiff's Complaint, except that the Court is respectfully referred to the Agreement for the terms and legal effect thereof.

The Facts Giving Rise to the Claims

5. Deny each and every allegation set forth in paragraphs "10", "11", "12" and "13" of plaintiff's Complaint.
6. Admit the allegations set forth in paragraph "9" of plaintiff's Complaint, except that the Court is respectfully referred to the Agreement for the terms and legal effect thereof.

The Claims -

First Cause of Action

7. Defendants repeat, reiterate and reallege each and every response contained in paragraphs "1" through "6" of defendants' Answer as if more fully set forth at length herein.

8. Deny each and every allegation set forth in paragraphs "15", "16" and "17" of plaintiff's Complaint.

Second Cause of Action

9. Defendants repeat, reiterate and reallege each and every response contained in paragraphs "1" through "8" of defendants' Answer as if more fully set forth at length herein.

10. Deny each and every allegation set forth in paragraphs "19", "20", "21" and "22" of plaintiff's Complaint.

Third Cause of Action

11. Defendants repeat, reiterate and reallege each and every response contained in paragraphs "1" through "10" of defendants' Answer as if more fully set forth at length herein.

12. Deny each and every allegation set forth in paragraphs "24", "25", "26", "27" and "28" of plaintiff's Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. Plaintiff has failed to state a claim or cause of action for which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. Plaintiff has failed to properly serve process upon Defendant Wayne K. Auge, and has failed to obtain personal jurisdiction over Dr. Auge. Therefore, this matter should be dismissed in its entirety as against Wayne K. Auge.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. Plaintiff has failed to properly serve process upon Roy E. Morgan, and has failed to obtain personal jurisdiction over Mr. Morgan. Therefore, this matter should be dismissed in its entirety as against Roy E. Morgan.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff drafted the Agreement between the parties, and represented by implication that plaintiff had the legal capacity to perform the services they were engaged to perform per the Agreement. In fact, however, plaintiff did not have the legal capacity to perform many of the functions and obligations contracted-for, as neither plaintiff nor its president, Rodney Paterson, is or was a registered securities broker. Plaintiff was well aware that it was not a registered securities broker, and by the knowing misrepresentation contained in the Agreement defendant MAP Technologies, LLC was fraudulently induced to enter into the Agreement, and was damaged thereafter because plaintiff could not complete its obligations under the Agreement. As a result of the fraudulent inducement, defendant is entitled to rescission of the Agreement and repayment of all monies paid by defendant MAP Technologies, LLC to plaintiff under the Agreement.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. As opposed to plaintiff's allegations contained in the Complaint, it was plaintiff that failed to perform as required by the Agreement between the parties, and therefore this action should be dismissed as against the defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. Neither plaintiff, nor its President Rodney Paterson, is a registered securities broker, and therefore neither could legally perform many of the obligations contained and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
eBC, INC.,

Plaintiff,

-against-

MAP TECHNOLOGIES, LLC, WAYNE R. AUGÉ,
ROY E. MORGAN, and NUORTHO SURGICAL,
INC.,

Defendants.
-----X

STATE OF NEW YORK }
COUNTY OF ORANGE }SS.:

AFFIDAVIT OF
MAILING VIA FEDERAL
EXPRESS

ROSEMARIE CHIVATTONI, being duly sworn, deposes and says:

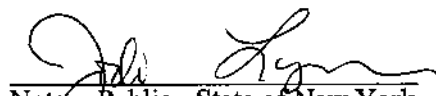
1. I am not a party to the action, am over 18 years of age and reside at Newburgh, New York.
2. On December 17, 2009, I served a true copy of Defendant Nuortho's Notice of Removal to Federal Court, in the above-entitled action by placing the same in Federal Express depository within the State of New York, prior to the latest time designated by that service for overnight delivery, addressed to the last known address of the addressee(s) as indicated below:

Allan B. Rappleyea, Esq.
Corbally, Gartland & Rappleyea, LLP
35 Market Street
Poughkeepsie, New York 12601

Federal Express Airbill No. 8702 7059 6927


RoseMarie Chivattoni

Sworn to before me this
17th day of December, 2009


Notary Public - State of New York

JODI LYNN
Notary Public, State of New York
No. 01LY4976874
Qualified in Orange County 2011
Commission Expires January 22, 2011